

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Rulemaking to Modify 220 C.M.R. §§ 8.00 *et seq.* .) D.T.E. 99-38

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**Comments of Cambridge Electric Light Company
and Commonwealth Electric Company**

A. Introduction

Cambridge Electric Light Company and Commonwealth Electric Company (together "COM/Electric") submit these comments in response to the Order Commencing Rulemaking issued by the Department of Telecommunications and Energy ("Department") dated April 27, 1999 (the "Order"). By that Order, the Department opened a rulemaking proceeding into modifying its regulations at 220 C.M.R. §§ 8.00 *et seq.*, which (1) establishes rules for determining rates, terms, and conditions governing the sale of electricity by qualifying facilities ("QFs") and small power producers to utilities and (2) prescribes the method for determining rates, terms, and conditions for the sale of electricity by utilities to QFs and small power producers (the "QF Regulations"). The Department first promulgated its QF Regulations in 1981 to implement the requirements of the Public Utility Regulatory Policies Act of 1978 ("PURPA").⁽¹⁾ D.P.U. 535; D.P.U. 535-A (1981). In 1986, the Department modified 220 C.M.R. §§ 8.00 *et seq.* To provide for the current QF Regulations. D.P.U. 84-276 (1985); D.P.U. 84-276-A (1985); D.P.U. 84-276-B (1986).

With the Order, the Department issued proposed regulations to replace its current QF Regulations: "Sales of Electricity by Qualifying Facilities and On-Site Generating Facilities to Distribution Companies, and Sales of Electricity by Distribution Companies to Qualifying Facilities and On-site Generating Facilities" ("Proposed Regulations").

In issuing its Proposed Regulations, the Department recognized that the introduction of retail competition in the electric generation sector by the Electric Industry Restructuring Act of 1997 (Chapter 164 of the Acts of 1997) (the "Restructuring Act") has brought about changes in the obligations and operations of electric distribution companies. One important change is the elimination of the obligations of a distribution company to plan for and serve the electric generation need of retail customers on a monopoly basis. Another change as a consequence of the Restructuring Act is the divestiture by distribution companies of the electric generating resources. See, e.g., Massachusetts Electric Company, D.P.U./D.T.E. 97-94 (1998); Boston Edison Company D.T.E. 97-113(1998); Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company, D.T.E. 98-78/83 (1998).

The Department has stated that the Proposed Regulations are designed to accomplish two major objectives: (1) price QF power on a market basis, and (2) redefine the responsibilities associated with interconnecting QFs and on-site generators⁽²⁾ to an electric distribution company's system.

In the following sections of these comments, COM/Electric first presents its overall support of the Departments's Proposed Regulations and then offers specific recommendations for changes to the Proposed Regulations regarding (1) the assignment of certain costs by electric distribution companies to QFs and (2) the timing for interconnection.

B. General Comments

COM/Electric believes that the Department's overall proposal for market-based pricing of QF power adequately balances the continuing requirements of PURPA, which is designed to encourage the wholesale sale of power by cogenerators and small power producers, and the provisions of the Restructuring Act, which is designed to open up the retail generation market to full competition. The Department's pricing mechanism can fit the current electric utility structure, where the retail utility has exited the business of selling electricity (except for providing standard offer and default services) and is primarily a distribution company that delivers electricity. In addition to examining the pricing of QF power in the context of competitive power markets, we must evaluate interconnection provisions

relating to QF in the context of open access to distribution and transmission facilities.

COM/Electric supports the Department's pricing structure for QF power whereby a distribution company will purchase such power at rates equivalent to the payments received by the distribution company from the power exchange operated by the Independent System Operator ("ISO") (Proposed Regulations, § 8.05(2)). In effect, the QF power will be purchased at the market clearing prices established by the ISO for energy and capacity under its bid-based system. These market clearing prices reflect the trading prices in the wholesale power market that purchasers would pay for energy and capacity and sellers would receive for providing those products. Thus, these prices represent the best demonstration of the incremental or avoided cost of power in the wholesale market. Furthermore, these prices are fully consistent with the provisions of PURPA that require an electric utility's purchases from QFs to be made at a price that does not exceed the utility's incremental cost of alternative energy. See 16 U.S.C. § 824a-3.

COM/Electric also supports the Department's requirements that the QF comply with all rules of the New England Power Pool ("NEPOOL") and the ISO that are necessary for the QF's power to be sold to the power exchange by the distribution company (Proposed Regulations, § 8.03(2)(b)). This requirement, along with the provision allowing for fines levied by NEPOOL or the ISO to be recovered from the QF (Proposed Regulations, § 8.03(2)(c)), are important terms to ensure that the distribution is held harmless from the market aspects associated with the prices paid for QF power.

COM/Electric also believes that the Department has appropriately identified the appropriate information to be provided by a generator to a distribution company with the generator's Notice of Intent to Interconnect (Proposed Regulations, §8.04(6)(b)). This type of information is essential to a successful interconnection with a generator.

C. Specific Recommended Changes

1. Distribution Company Recovery of Transaction Costs

The Department's structure under the Proposed Regulations establishes the distribution company as an intermediary between QFs and the ISO. For example, the distribution company buys power from QFs and sells the power at the ISO power exchange, both at the ISO market clearing price (Proposed Regulations, § 8.03(2)(a)). Also, the distribution company can pass through to the QF any fines, penalties, or sanctions that are levied as a result of the QF's failure to comply with ISO or NEPOOL rules (Proposed Regulations, § 8.03(2)(c)). While it may be appropriate for the distribution company to provide this intermediary function at this time to satisfy the requirements of PURPA, the QF and not the distribution

company should bear the transaction costs associated with this function. With distribution companies divesting of their generation resources, the distribution companies no longer require the staffing to perform the full range of merchant functions for dealings with the ISO and NEPOOL. Thus, the costs associated with the distribution companies' intermediary function under the Department's QF structure should be a cost to the QF of doing business. This assignment of costs is consistent with general costing principles applied by the Department and is not inconsistent with PURPA.⁽³⁾ Accordingly, COM/Electric recommends that the Department include within its final QF regulations provisions allowing for the distribution company to recover from the QF any general and administrative costs associated with the distribution company's intermediary function in buying and selling the QF power and in related dealings with the ISO and NEPOOL.

2. Interconnection Procedures

The Department's Proposed Regulations contain specific procedures governing the interconnection of a QF or on-site generator with the distribution company's system. The procedures include: initial inspection of the proposed generator by the distribution company (Section 8.04(2)); distribution company's estimation of interconnection costs (Section 8.04(3)); system protection requirements for QFs and on-site generators (Section 8.04(4)); distribution company right to inspect, test, and certify (i) accuracy of metering equipment owned by the QF or on-site generator, (ii) compliance with system protection requirements, and (iii) the electrical interface (Section 8.04(5)); information requirements for QFs and on-site generators to interconnect and notice requirements for the distribution company where extensive modifications to its system are required to accommodate the interconnection (Section 8.04(6)); and the determination and assignment of interconnection costs (Section 8.04(7)). Under the Department's proposed structure, these procedures would apply to any interconnection by a QF or on-site generator and a distribution company's "system." The procedures do not distinguish among the distribution company's distribution system, its network transmission system, or its pool transmission facilities ("PTF"). COM/Electric believes that such distinction is important because a generator's interconnection with network transmission facilities is expressly governed by the distribution company's Open Access Transmission Tariff under the jurisdiction of the Federal Energy Regulatory Commission ("FERC"), and a generator's interconnection with a distribution company's PTF is expressly governed by the NEPOOL Restated Open Access Transmission Tariff also under FERC jurisdiction.

These FERC transmission tariffs contain very specific procedures setting forth the obligations of the owners of the transmission facilities and the requirements of the generator for system interconnection. Although the interconnection procedures proposed by the Department and those prescribed by the FERC transmission tariffs are similar, there are differences. To recognize these differences, COM/Electric recommends that, at a minimum, the Department state

that interconnection by a QF or on-site generator to a distribution company's network transmission facilities or to PTF shall be governed by the applicable FERC tariff. Alternatively, the Department could incorporate the interconnection procedures provided in one of the FERC tariffs. This treatment of interconnection procedures would avoid disparate treatment of certain generators compared to QFs and on-site generators. For this purpose, COM/Electric has attached relevant sections of the NEPOOL Restated Open Access Transmission Tariff (Sections 49 and 33).

D. Conclusion

COM/Electric endorses the implementation of market-based pricing structure to satisfy the PURPA requirements for a distribution company's purchase of power from QFs. Also, COM/Electric recommends that the Department modify its Proposed Regulations as stated herein to provide for appropriate assignment of the costs of interconnection by QFs and on-site generators, and to provide for consistent treatment of all generators regardless of whether interconnection is made with the distribution company's distribution system, its network transmission facilities, or its PTF.

Dated: May 28, 1999

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1. 16 U.S.C. §§ 832-a - 825q, 2601 - 2645, 2701 - 2708 (1998).
2. For purposes of the Restructuring Act and the Proposed Regulations, on-site generators are a class of generators of 60 kilowatts or less. M.G.L. c. 164, § 1G(g)(iii).
3. When PURPA was enacted, Congress explicitly stated that it did not intend "the ratepayers of a utility to subsidize cogenerators or small power producers." H.R. Conf. Rep. No. 95-1750 U.S.C.C.A.N. (92 Stat.) 7659, 7832.